

US.Pat.Apl.Nr 10/759,164

Docket: 433-11US

Remarks,
submitted August 2005

1. This is responsive to the Office Action dated 11 May 2005.

2. Please enter the amendments to the claims, as in the attachment.

No claims are cancelled.

Claims 1,5,6,8-11 are amended.

Claims 17-19 are new.

3. Re the '103 rejection of claim 1.

In the O/A, the PO position was stated as: *LAUNDER discloses the claimed invention, as best understood, except it is not positively disclosed that the trays are made of plastic.* We feel this position was hardly tenable under the claim 1 as examined. And especially under the amended claim 1, the situation is very far removed from the notion that the ONLY modification that would have to be made to the LAUNDER apparatus, in order for a modified LAUNDER apparatus to fall within the scope of claim 1, would be to make the floor out of plastic.

We offer the following comments on this point.

4. The as-examined claim 1 recited "Cage apparatus for transporting live poultry". We feel this limitation was not given due weight in the '103 rejection of claim 1. It is our position that the designer would have to make huge changes to the LAUNDER apparatus, in order for the changed apparatus, as a whole apparatus, to fall within the scope of those words -- quite apart from the change to the material of the floor of the cage.

However, we have introduced several other features into claim 1, now to emphasize that this invention is limited to transport cages. That is to say: claim 1 is limited to the kind of cages that can be picked up e.g by a fork-lift-truck, and lifted on and off a road-transport truck. The invention of claim 1 has nothing to do with on-farm, static, fixed cages, of the type as depicted by LAUNDER.

5. We note some of the major modifications that would have to be made to the LAUNDER apparatus, in order for the modified LAUNDER apparatus to fall within the scope of amended claim 1, as follows:

- a) The designer would have to discard LAUNDER's carefully-designed air-conditioning system, since that has no place in a transport-the-birds-to-factory-on-a-truck type of cage.
- b) The designer would have to discard LAUNDER's carefully designed manure-collection system, since again there is no need for that for truck transport.
- c) The designer would have to redesign the one-single very-long cage of LAUNDER as shown, and instead replace that with many individual cages, each one of a size and robustness whereby the individual cage can be lifted on and off a truck.

We can see no reason why the skilled person would be motivated to do these things. Indeed, these changes would make the apparatus of LAUNDER less suited to the purpose for which its designer

plainly intended it. The fact that a new modification to an old apparatus makes the old apparatus WORSE at performing the function for which the old apparatus was designed, is a well-known manner of demonstrating that that new modification would not have been obvious.

We can go on:

d) We might concede that, in LAUNDER, there must be some way of putting birds into, and taking them out of, the LAUNDER poultry cage; however, LAUNDER does not describe how this is done, and we do not see anything that could be regarded as respective front doors, one for each tray, as we require.

e) We might concede that LAUNDER depicts a plurality of rows of trays. But we do not see a plurality of columns of trays in LAUNDER. (However, we do not insist on this point.)

Also, we note that LAUNDER is concerned not at all with a cage that is designed to be picked up and moved and transported. The static LAUNDER cage takes all the robustness it needs from the fact that it is resting on the ground. But when a cage is being used to transport poultry birds inside, the birds need to be protected from being banged against hard/sharp things. The designer of on-farm fixed cages is concerned with preserving eggs, and with conveying manure away from the cages. The designer of road-transport cages is concerned not at all with those things, but instead is concerned with e.g. the need to keep birds' body parts from protruding out of the cage.

6. Re the alleged obviousness of changing the LAUNDER floor to plastic.

Amended claim 1 is now limited to the floor of the tray being, not only of plastic, but also imperforate or nearly imperforate.

The LAUNDER patent is sparing of details as to the actual physical structure of the floor or bottom of the cage. The only written reference we can see to these bottoms is on lines 32,33 of column 3: . . . *receive eggs which roll down the sloped bottoms of the cages.* Looking at Fig 1 of LAUNDER, it seems the floor or bottom of the cage is of the same wire mesh or lattice structure as the walls of the cage. Certainly, an open lattice floor would be in keeping with LAUNDER's design feature of collecting all the excrement etc that falls down from the cages into the liquid in the troughs 20. But clearly, the bottom or floor of the LAUNDER cage is *sloped* in order to direct eggs into the trough, not in order to prevent pooling of liquid. We cannot see how liquid might "pool" on an open lattice floor, in any event -- so the designer would see no reason to take precautions to prevent it.

It seems plausible that, if the need for an egg-collecting facility were to be removed from the LAUNDER apparatus, the designer might just as well make the floor or bottom of the cage horizontal, as far as the rest of the functions of the floor are concerned. Of course, in a cage for the road-transport of poultry birds, there is no need for any kind of egg-collecting facility. So, if the designer were to seek to modify the LAUNDER cage to make it suitable for road-transport -- so having removed the egg-collecting facility -- what reason would the designer have for making the floor of the cage anything but horizontal?

The LAUNDER floor, with its open mesh or lattice format, is quite unsuitable for a road-transport cage. We cannot tell exactly what LAUNDER's mesh-size is, but it appears to be amply large enough to permit the birds' feet to enter, and to become snagged in, or caught by, the holes, causing great distress (or worse) to the birds as the birds are jostled around in a bouncing cage.

However, an open-mesh floor is acceptable for an on-farm static cage, as LAUNDER shows -- and indeed as HEDESON shows. In the HEDESON cage, the floor also is an open mesh - this time of plastic. But HEDESON's cage, again, is designed as an on-farm static cage, and is quite unsuitable

for road-transport use. Again, no dimensions are given, but it is plain that HEDESON's mesh is so open that there can be no question of liquid collecting on the upper surface of the floor, simply for that reason. Therefore, the designer, whether following LAUNDER or following HEDESON, would have no notion of any need to provide a means to prevent pooling.

By contrast, when the cage is intended for road-transport, the floor must be smooth. Hence the now-included limitation in claim 1. That is to say, in a road-transport cage, there must be no holes in the floor through which a bird's foot (or a portion of its foot) could enter, and become snagged. Traditionally, floors of road-transport cages have been made of smooth, non-perforated sheet metal -- whereby, at least, there has been no problem of the bird's feet becoming snagged. But of course, with the traditional sheet metal floors, there has been the very significant problem of pooling.

For these reasons, we feel the skilled person would not find it obvious to so modify any of the old prior art apparatuses that the new modified version of the apparatus would fall within the scope of (amended) claim 1.


7 Re the objection to claim 6.

We can see no point in the addition referred to. If there is any difference in the scope of the claim, between "of plastic" and "made of plastic", we prefer our original version.

8. Re the '112 rejections.

Most of the points made in the O/A are taken care of by the amendments. Regarding claim 2, we think the PTO has simply made a mistake; the antecedent is in line 2.

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Enclo:

- amended claims (6 pages)